

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition #: 20-012-02-1-5-00577
Petitioner: Rebecca B. Smith
Respondent: Concord Township Assessor (Elkhart County)
Parcel #: 20-06-06-456-025.000-012
Assessment Year: 2002

The Indiana Board of Tax Review (the “Board”) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioner initiated an assessment appeal with the Elkhart County Property Tax Assessment Board of Appeals (the “PTABOA”) by written document dated September 18, 2003.
2. The notice of the decision of the PTABOA was sent to the Petitioner on September 21, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the Elkhart County Assessor on October 14, 2004. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated December 10, 2004.
5. Administrative Law Judge Patti Kindler held the administrative hearing on January 26, 2005.
6. Persons present and sworn in at hearing:
 - a) For Petitioner – Rebecca B. Smith, taxpayer,
 - b) For Respondent – David Puro, Concord Township Deputy Assessor,
Richard Schlueter, Concord Township Deputy Assessor.

Facts

7. The property a residential dwelling located at 217 East Blvd., Elkhart, Indiana as is shown on the property record card.

8. The Administrative Law Judge (the “ALJ”) did not conduct an inspection of the property.
9. The assessed value of subject property as determined by the Elkhart County PTABOA:
Land \$18,500 Improvements \$108,900 Total \$127,400.
10. The assessed value requested by Petitioner:
Land \$18,500 Improvements \$79,000 Total \$97,500.

Issue

11. Summary of Petitioner’s contentions in support of alleged error in assessment:

- a) The \$127,400 assessment applied to the subject dwelling is excessive. *Smith testimony*. Both the market analysis and the certified appraisal show an estimated value for the home below \$100,000. *Petitioner Exhibits 1, 4*.
- b) The appraisal prepared by Peggy L. Fisher, Certified Residential Appraiser, dated November 20, 2003, indicates an estimated market value of \$97,500. *Smith testimony; Petitioner Exhibit 4*.
- c) The values reported on the market analysis and certified appraisal are within \$2,500 of each other. There is a \$30,000 discrepancy between the value indicated by the 2 reports and the assessed value. *Smith testimony; Petitioner Exhibits 1, 4, 6*. The certified appraisal represents a more accurate value than the assessment and should carry more weight in determining the proper market value for the subject property. *Smith testimony; Petitioner Exhibits 4, 6*.

12. Summary of Respondent’s contentions in support of the assessment:

- a) The market analysis is flawed, not only because the adjustments used lack support and the square footages are incorrect, but also because a market analysis is not considered a reliable indicator of value in accordance with Indiana law. *Schlueter testimony; Respondent Exhibit 6*.
- b) The certified appraisal reports that the subject is 1,751 square feet, which is more than 130 square feet larger than the square footage recorded on the corrected subject PRC. Square footage makes a difference in the property’s value, but 100 square feet should not make that much difference in value. *Puro testimony*.
- c) The appraisal should not be accepted because it is dated November of 2003, which is beyond the assessment date and was not available to the assessor at the time of reassessment. *Schlueter testimony; Respondent Exhibit 9*.

Record

13. The official record for this matter is made up of the following:

- a) The Petition.
- b) The tape recording of the hearing labeled BTR 5334.
- c) Exhibits:
 - Petitioner Exhibit 1: Comparative Market Analysis,
 - Petitioner Exhibit 2: Form 113, Notice of Assessment,
 - Petitioner Exhibit 3: Form 130 Petition,
 - Petitioner Exhibit 4: Certified Real Estate Appraisal,
 - Petitioner Exhibit 5: Request for Additional Evidence,
 - Petitioner Exhibit 6: Notice of Final Determination,
 - Petitioner Exhibit 7: Form 131 Petition,
 - Respondent Exhibit 1: Cole-Layer-Trumble (CLT) review documents, including an informal review document, a 1989 sale listing for the subject property, and a copy of the Comparative Market Analysis,
 - Respondent Exhibit 2: Form 130 Petition,
 - Respondent Exhibit 3: The original PRC with changes noted by CLT,
 - Respondent Exhibit 4: Revised PRC after changes made by CLT,
 - Respondent Exhibit 5: Revised PRC, which reflects current assessment,
 - Respondent Exhibit 6: Copy of original Comparative Market Analysis,
 - Respondent Exhibit 7: PTABOA's Request for Additional Evidence for the taxpayer to submit an appraisal,
 - Respondent Exhibit 8: PTABOA's Request for Additional Evidence to Concord Township regarding a review of the lot pricing,
 - Respondent Exhibit 9: Notice of Final Determination,
 - Respondent Exhibit 10: Form 131 Petition,
 - Board Exhibit A: Form 131 Petition with attachments,
 - Board Exhibit B: Notice of Hearing on Petition,
 - Board Exhibit C: Sign In Sheet.
- d) These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:

- a) A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax

Ct. 2003); *see also*, *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).

- b) In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board ... through every element of the analysis”).
- c) Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

15. The Petitioner did not provide sufficient evidence to support her contentions. This conclusion was arrived at because:

- a) The Petitioner submitted a Comparative Market Analysis and a Certified Real Estate Appraisal to show that the current assessment is incorrect and that the correct assessment should be \$97,500.
- b) The Comparative Market Analysis, prepared by Prudential Real Estate on June 12, 2003, reports a recommended listing price for the subject property based on six adjusted comparable sales in the subject market area. *Petitioner Exhibit 1*. The Market Analysis concludes that the recommended list price would be \$95,010. The Market Analysis, while it may not serve as an indicator of actual market value, is an indicator of the starting point of value within the market and could be of some probative value if shown to be relevant to the valuation date established for the 2002 Reassessment. *Long v. Wayne Twp. Assessor*, No. 49T10-0404-TA-20, slip op. at 8-9 (Ind. Tax Ct. January 28, 2005). Petitioner, however, did not bring forth any evidence relating the 2003 Market Analysis to the value as of January 1, 1999. Because the Petitioner did not relate the 2003 Market Analysis to the valuation date of January 1, 1999, the Market Analysis does not serve as probative evidence. *Id.*
- c) The Certified Real Estate Appraisal, prepared by Peggy Fisher, a Certified Real Estate Appraiser, indicates an estimated market value of \$97,500 as of November 20, 2003. An appraisal prepared by a certified appraiser would have probative value if shown to be relevant to the valuation date established for the 2002 Reassessment. *Id.* The Petitioner has failed to present any evidence that would relate the November 20, 2003, appraisal value to the value as of January 1, 1999. Thus, the appraisal presented by the Petitioner has no probative value.
- d) Where the Petitioner did not support the claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not

triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioner failed to make a prima facie case. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.